

Item _____

Prepared by: Steve Mulroy

Approved by: _____

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE SHELBY COUNTY CODE OF ORDINANCES BY ENACTING A NEW PREVAILING WAGE ORDINANCE THAT REQUIRES COMPLIANCE WITH PREVAILING WAGES AND BENEFITS AND PROVIDES FOR A MEANS OF ENFORCEMENT, PENALTIES, AND SANCTIONS FOR VIOLATIONS. SPONSORED BY COMMISSIONER STEVE MULROY.

WHEREAS, it is the purpose of Shelby County Government to promote the economical and beneficial development of Shelby County; and

WHEREAS, it is in the interest of Shelby County to award contracts for the construction, alteration, and/or repair of public buildings or public works to responsible bidders; and

WHEREAS, the Shelby County Board of Commissioners has determined that responsible bidders are those who, among other things, pay responsible wages and benefits to their employees performing work on such contracts.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE THAT, the Shelby County Code of Ordinances be and the same is hereby amended by adding the following prevailing wage ordinance as a new section in Chapter 2, Article II, Division 2 entitled "Department of Purchasing; Sales; Contracts:"

(a) Prevailing Wage Required. Any firm, individual, partnership, or corporation that is awarded a contract by the Shelby County government for the construction of, improvement, enlargement, alteration or replacement of a public work or project in excess of \$500,000 and any subcontractors of such public work or project in excess of \$100,000 ("Recipient") shall be required to pay local prevailing wages and benefits for laborers, mechanics or other listed classifications as defined by the Tennessee Department of Labor.

(b) Avoidance Prohibited. Contracts for construction of, demolition, improvement, enlargement, alteration or replacement of a public work or project shall not be deliberately divided into multiple projects for the purpose of circumventing the prevailing wage ordinance.

(c) Prevailing Wage Commission. There shall be a Prevailing Wage Commission which shall ensure that the Prevailing Wage Ordinance is properly interpreted and enforced and which shall have general oversight responsibility for the Ordinance. The Prevailing Wage Commission shall be composed of 7 members: one representative of the Administration, one representative of the County Commission, one representative from the Memphis and West Tennessee Building and Construction Trades Council, one representative of the Associated Builders and Contractors, and one representative of a local minority contractor association. These members shall be appointed by the Mayor and confirmed by a majority of the County Commission. If a representative of one of the designated bodies or associations is unavailable after reasonable effort, a substitute member of the Prevailing Wage Commission may be appointed by the Mayor subject to confirmation by a majority of the County Commission. The Prevailing Wage Commission shall meet quarterly, or as required. It shall have no authority in the establishment of wages, benefits, or job descriptions except as expressly provided in this Ordinance. It may administratively adjudicate or otherwise resolve disputes regarding compliance with the Ordinance or interpretation of its provisions. The Prevailing Wage Commission may establish rules and procedures for its operations.

(d) Determination of Prevailing Wages and Benefits. For the purposes of this Ordinance, the prevailing wage and benefit rates shall be set as follows. The prevailing wage rate shall be the most current State of Tennessee prevailing wage established by the Tennessee Department of Labor for Region 1 (Shelby County). The benefit rates shall be the most current rates described in the published schedule by the Memphis and West Tennessee Building and Construction Trades Council, except as otherwise provided in this Ordinance.

(e) Equivalent Benefits. If a contractor or subcontractor provides health, pension, or other benefits which are equivalent to those paid under Section 4, but at less cost, it may be eligible to pay benefits at an hourly rate lower than set out in Section 4 for that category of worker. Such a determination may be made by the Prevailing Wage Commission.

(f) Filing Scheduled Wages and Benefits. Any contractor or subcontractor performing under the terms of this Ordinance shall file with the County a schedule of the wages and benefits to be paid to such laborers, workmen or employees, using the categories then in use by the Tennessee Department of Labor. The schedule must list wages and benefits which equal or exceed the prescribed minimum levels provided for in this Ordinance for each category or laborer. Such schedule shall be included in all bid documents and clearly posted on the jobsite during construction. It shall be signed by a responsible party under penalty of perjury with a statement that the foregoing information is true and correct to the best of the signer's knowledge and belief.

(g) Apprentices. For any work project covered by this Ordinance, any apprentice used must be properly indentured into a joint labor management apprenticeship training program or an equivalent program that is registered and certified with the U.S. Department of Labor, Bureau of Apprenticeship Training.

(h) Compliance Monitoring. The County Commission may establish rules, regulations, and procedures for monitoring and ensuring compliance with the provisions of this Ordinance. Such compliance monitoring will include but is not limited to site inspections at covered project work sites in which workers will be interviewed about their wages and benefits outside the presence of contractors or supervisory personnel. The Administration may use volunteer labor for these site inspections. It may also contract with non-county agencies, organizations, or firms to conduct these site inspections. To this end, contractors shall allow such inspectors to enter work sites and conduct interviews accordingly. The County and/or its authorized representative shall have the power to request and receive information from contractors which would substantiate compliance with this Ordinance.

(i) Remedies for Noncompliance.

(1) Fines. Any Recipient which knowingly fails to comply with the provisions of this Ordinance as determined by the Prevailing Wage Commission shall be fined not less than the maximum amount allowable under the law for each violation.

(2) Debarment. Any Recipient which is found to have committed 2 violations of this Ordinance in any 24-month period may, at the discretion of the Prevailing Wage Commission, be prohibited from being awarded a contract by the County for any public work or project for a period of up to 24 months from the date of adjudication of the second violation.

(3) Suit By County. The County may file an appropriate action in a court of competent jurisdiction to enforce the provisions of this Ordinance, seeking remedies including the payment of fines, appropriate declaratory or injunctive relief, court costs, and payment of back pay to affected workers. It is the intent of this Ordinance that factual findings by the Prevailing Wage Commission, including but not limited to the existence, number, and dates of violations, as well amounts owed workers and to whom, shall be relevant and probative evidence in any such civil action, and shall constitute prima facie evidence of the applicable fact.

(4) Private Right Of Action. An aggrieved worker may file an enforcement action similar to that described in subsection (3) above. Such a private plaintiff may obtain all relief so listed except for the imposition of fines.

(j) Severability. The provisions of this Ordinance are severable. If any of these sections, provisions, sentences, clauses, phrases, or parts is held unconstitutional or void for any reason, the remainder of this Ordinance shall continue in full force and effect.

BE IT FURTHER ORDAINED, That this ordinance shall take effect pursuant to the
Shelby County Charter and become effective as provided by law.

Chairman of County Commission

A C Wharton, Jr.
Shelby County Mayor

Date:_____

ATTEST:

Clerk of County Commission

FIRST READING: _____

SECOND READING: _____

ADOPTED THIRD READING: _____